

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

2311 RACING LLC d/b/a 23XI RACING and
FRONT ROW MOTORSPORTS, INC.,

Plaintiffs,

v.

NATIONAL ASSOCIATION FOR STOCK
CAR AUTO RACING, LLC and JAMES
FRANCE,

Defendants.

Civil Action No. 3:24-cv-886-FDW-SCR

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Plaintiffs 2311 Racing LLC (“23XI”) d/b/a 23XI Racing and Front Row Motorsports, Inc. (“Front Row”), by and through their undersigned counsel and pursuant to Federal Rule of Civil Procedure 65, hereby move this Court for entry of an order granting a preliminary injunction in their favor and against Defendants National Association for Stock Car Auto Racing, LLC (“NASCAR”) and James France. In support of this Motion, Plaintiffs state as follows:

1. Plaintiff 2311 Racing LLC d/b/a 23XI Racing is a limited liability company organized under the laws of North Carolina, with its principal place of business at 12311 Airspeed Drive, Huntersville, North Carolina 28078.

2. Plaintiff Front Row Motorsports, Inc. is a corporation organized under the laws of Tennessee, with its principal place of business at 1111 Gateway Service Park Road, Morristown, Tennessee 37813. Front Row is registered to transact business in the state of North Carolina.

3. By this motion, Plaintiffs seek preliminary relief from this Court: (i) requiring Defendants to allow 23XI Racing to run during the pendency of this litigation two NASCAR Cup

Series teams under the terms of the NASCAR Cup Series Charter Member Agreements offered to Plaintiffs on September 6, 2024; (ii) requiring Defendants to allow Front Row to run during the pendency of this litigation two NASCAR Cup Series teams under the terms of the NASCAR Cup Series Charter Member Agreements to Plaintiffs on September 6, 2024; and (iii) enjoining Defendants from enforcing Section 10.3 of any NASCAR Cup Series Charter Member Agreement that is granted, or transferred (pursuant to the pending transactions with Stewart-Haas Racing, LLC), to either Plaintiff as a defense to any antitrust claim that either Plaintiff is pursuing in this action.

4. As set forth in the accompanying memorandum of law and its supporting declarations and exhibits, Plaintiffs are likely to succeed on the merits of their claim that Defendants have unlawfully exercised monopsony power in the market for premier stock car racing teams in the United States in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2. Defendants' anticompetitive conduct has ensured that NASCAR operates the only premier stock car racing series in the United States (the "Cup Series"), and Defendants unlawfully exercise this monopsony power to exclude competition and injure Plaintiffs and other stock car racing teams by forcing them to simultaneously accept below competitive market terms and release any antitrust claims against Defendants in the "Charter Agreement" contracts that racing teams must sign in exchange for guaranteed access to Cup Series races and associated revenue streams.

5. In the absence of a preliminary injunction, Plaintiffs will face several irreparable harms, including the loss of their antitrust rights, sponsors, drivers, industry goodwill, and irreplaceable competitive opportunities. Plaintiffs' lost revenue, to the extent it can be measured, will total tens of millions of dollars per year, which threatens the very existence of their businesses.

6. The facts and equities demonstrate that the threatened injuries to Plaintiffs far outweigh any alleged “harm” that Defendants may suffer, which is limited to having to defend their antitrust violations without asserting a coerced and anticompetitive release as a purported defense, if this Court issues a preliminary injunction.

7. The issuance of a preliminary injunction will serve the public’s interest in preventing a party from enforcing anticompetitive practices.

8. Plaintiffs have attempted in good faith to confer with Defendants to resolve this matter. Counsel for Plaintiffs conferred with counsel for Defendants via telephone on November 25, 2024, but the parties were unable to resolve any disagreements related to Plaintiffs’ requested preliminary injunction.

9. WHEREFORE, Plaintiffs hereby respectfully request that this Honorable Court grant the following preliminary relief:

- a. Defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with Defendants, must allow 23XI Racing to run during the pendency of this litigation two NASCAR Cup Series teams under the terms of the NASCAR Cup Series Charter Member Agreements offered to 23XI Racing on September 6, 2024;
- b. Defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with Defendants, must allow Front Row to run during the pendency of this litigation two NASCAR Cup Series teams under the terms of the NASCAR Cup Series Charter Member Agreements offered to Front Row on September 6, 2024; and

- c. Defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with Defendants, shall be enjoined from enforcing Section 10.3 of any NASCAR Cup Series Charter Member Agreement that is granted, or transferred (pursuant to the pending transactions with Stewart-Haas Racing, LLC), to either Plaintiff as a defense to any antitrust claim that either Plaintiff is pursuing in this action.

Dated: November 26, 2024

Respectfully submitted,

WINSTON & STRAWN LLP

By: /s/ Jeffrey L. Kessler
Jeffrey L. Kessler
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166
Tel: (212) 294-6700
Fax: (212) 294-4700
jkessler@winston.com

Danielle T. Williams
WINSTON & STRAWN LLP
300 South Tryon Street
16th Floor
Charlotte, NC 28202
Tel: (704) 350-7700
Fax: (704) 350-7800
dwilliams@winston.com

Jeanifer Parsigian
Michael Toomey
WINSTON & STRAWN LLP
101 California Street
San Francisco, CA 94111
Tel: (415) 591-1000
Fax: (415) 591-1400
jparsigian@winston.com

mttoomey@winston.com

Matthew R. DalSanto
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601
Tel: (312) 558-5600
Fax: (312) 558-5700
mdalsanto@winston.com

*Counsel for Plaintiffs 2311 Racing LLC d/b/a
23XI Racing and Front Row Motorsports Inc.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION** was electronically filed using the Court's CM/ECF system, which will automatically send notice of this filing to counsel of record for all parties, including:

Tricia Wilson Magee
SHUMAKER LOOP & KENDRICK, LLP
101 S. Tryon St., Suite 2200
Charlotte, NC 28280
tmagee@shumaker.com

Christopher S. Yates
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
chris.yates@lw.com

Lawrence E. Buterman
LATHAM & WAKINS LLP
1271 Avenue of the Americas
New York, NY 10020
lawrence.buterman@lw.com

Anna M. Rathbun
Christopher J. Brown
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
anna.rathbun@lw.com
chris.brown@lw.com

Counsel for Defendants National Association for Stock Car Auto Racing, LLC and James France

Jeffrey L. Kessler
Jeffrey L. Kessler